

Appl. No. : **09/771,673**
Filed : **January 29, 2001**

REMARKS

The Examiner has indicated that the Office Action mailed February 6, 2004 is “final.” In that Office Action, the Examiner rejected Claims 15-24. In the present Amendment and Response to Office Action, Applicants have amended independent Claim 15 and have added Claims 27-32. Applicants respectfully request entry of the amendments and full consideration of the remarks contained herein.

Withdrawal of Finality of Office Action under M.P.E.P. § 706.07(D) and Entry of Amendments

Applicants believe that the Examiner erred in indicating that the present Office Action is “final.” Applicants had previously submitted a Request for Withdrawal of Finality of Office Action under M.P.E.P. § 706.07(D) on March 2, 2004. In summary, because the Office Action was the first office action after a Request for Continued Examination (RCE) in which amendments were entered, Applicants submit that the Office Action should be designated “non-final” under M.P.E.P. § 706.07(b). Consequently, Applicants respectfully submit that the present Response to Office Action should be treated as a response to a non-final office action. As such, Applicants respectfully request that the amendments presented herein be entered as a matter of right.

Amendments to the Claims

Applicants have amended the claims to clarify further the subject matter that Applicants regard as the invention. For example, Applicants have amended independent Claim 15 to recite that “the auxiliary chamber and the piping system upstream of the auxiliary chamber are each formed of different materials.” Support for this language can be found in the Application as originally filed. *See, e.g.*, the Application, p. 2 and 5-6. Consequently, Applicants respectfully submit that the amendments add no new matter and are fully supported by the Application as originally filed.

Newly Added Claims

Applicants have added Claims 25-32. Applicants respectfully submit that new Claims 25-32 add no new matter and are fully supported by the Application as originally filed. For

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example, support for the language concerning the materials forming the auxiliary chamber and/or various parts of the piping system can be found in the Application, pp. 2 and 5-6, as originally filed. Support for the language concerning “means for preventing diffusion of the second etching gas through the inlet of the auxiliary chamber” can be found in the Application, p. 2-7, as originally filed.

Rejections Under 35 U.S.C. § 103

The Examiner has rejected Claims 15, 17-18 and 20-24 as being unpatentable over Koshimizu (U.S. Patent No. 6,162,323) in view of Tohru (EPO 0335313). In addition, the Examiner has rejected Claims 16 and 19 as being unpatentable over Koshimizu and Tohru in further view of Izumi (U.S. Patent No. 5,022,961). The Examiner has stated that Koshimizu teaches all the limitations of independent Claim 15, but does not teach that the valves of that patent are shut off valves. Tohru is asserted to satisfy this deficiency. The Examiner has also stated that the recited “open/closed state of the shut-off valves is a matter of intended use, which does not merit patentable weight.”

Initially, Applicants respectfully submit and note for the record that the claims as amended in the Request for Continued Examination filed September 29, 2003 were patentably distinct. For example, Applicants submit that the limitations regarding the relative states of the valves provide clear structural limitations on the physical orientations of the shut-off valves relative to one other and, so, merit patentable weight and distinguish the claims over the art of record. *See, e.g., In re Venezi*, 189 U.S.P.Q. 149 (CCPA 1976).

Nevertheless, Applicants have amended independent Claim 15 to expedite prosecution of the Application. Consequently, Applicants respectfully submit that the rejections of Claim 15, and Claims 16-24 depending from Claim 15, are moot.

Independent Claim 15 now recites that “the auxiliary chamber and the piping system upstream of the auxiliary chamber are each formed of different materials.” As discussed in the Application, Applicants have advantageously allowed for the use of disparate materials in the piping system, thereby minimizing materials costs and reducing the need for regular replacement of the piping system. Notably, because the recited valve configuration prevents corrosive gases and gas mixtures from diffusing back through the auxiliary chamber, the auxiliary chamber can

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be made of expensive corrosion resistant materials, such as plastic materials, while the piping system upstream of the auxiliary chamber can be made of relatively inexpensive, non-corrosion resistant materials, such as stainless steel. In contrast, typical piping systems may be formed entirely of stainless steel. These piping systems are more susceptible to corrosion and, so, must be more regularly checked and replaced. On the other hand, the recited arrangement obviates the need to use undesirably expensive corrosion resistant plastic throughout the piping system. *See, e.g.*, p. 1-2 of the Application.

Applicants submit that the art of record does not discuss and, so, neither teaches nor suggests such an advantageous arrangement of materials for the auxiliary chamber and parts of the piping system. Applicants submit that the use of different materials is not motivated at all by the art of record.

Regarding newly added Claims 28-32, Applicants note that independent Claim 28 recites a “means for preventing back diffusion of the second etching gas through the inlet of the auxiliary chamber.” Applicants respectfully submit that the art of record does not teach or suggest such a “means,” which operates to prevent “diffusion of the second etching gas through the inlet of the auxiliary chamber by opening the first and second shut-off valves only one at a time and by opening the second and the third shut-off valves only one at a time.” Applicants note that such means limitations are to be treated as structural limitations and not merely as statements of intended use. *See, e.g.* 35 U.S.C. § 112, paragraph 6.

Accordingly, Applicants respectfully submit that the pending claims are allowable over the art of record. Applicants have not specifically addressed the rejections of dependent claims as being moot in view of the remarks herein. However, Applicants expressly do not acquiesce in the Examiner’s findings not addressed herein. Moreover, Applicants submit that the dependent claims recite further novel and non-obvious features of particular utility.

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CONCLUSIONS

In view of the foregoing remarks, Applicants respectfully submit that the application is in condition for allowance and request the same. If some issue remains that the Examiner feels may be addressed by Examiner's amendment, the Examiner is invited to call the undersigned for authorization.

Respectfully submitted,

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